

1 JASON M. FRIERSON
United States Attorney
2 Nevada Bar No. 7709
CHRISTOPHER BURTON
3 Nevada Bar No. 12940
NADIA AHMED
4 Nevada Bar No. 15489
Assistant United States Attorneys
5 501 Las Vegas Boulevard South, Suite 1100
Las Vegas, Nevada 89101
6 Tel: (702) 388-6336
Fax: (702) 388-6418
7 Christopher.Burton4@usdoj.gov
Nadia.Ahmed1@usdoj.gov
8 *Attorneys for the United States*

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10 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ADAM PACHECO,

15 Defendant.
16

Case No. 2:19-cr-00248-RFB-DJA

Motion to Continue Calendar Call and Trial

17 **I. INTRODUCTION**

18 The defendant, Adam Pacheco, is currently scheduled to proceed to trial on May 8, 2023.
19 The government has been preparing to proceed with the May 8 trial, has issued trial subpoenas
20 to more than thirty witnesses (including more than twenty laywitnesses), and has begun
21 coordinating a deaf translator for the multiple deaf victims who are anticipated to testify at trial.
22 However, defense has represented that they are not prepared to proceed to trial (*see* ECF No.
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1 117, at 13)¹ and has filed a pretrial motion to dismiss which will not be fully briefed until
 2 approximately one week before calendar call and two weeks before trial. The trial in this case
 3 should therefore be continued 30 days so that the Court may consider the dispositive pretrial
 4 motion pending before it and issue an opinion.

5 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

6 On October 1, 2019, a federal grand jury returned a 14-count Indictment charging
 7 Pacheco with conspiracy to commit wire fraud, wire fraud, conspiracy to commit money
 8 laundering, money laundering, and conspiracy to structure. ECF No. 1.

9 As the government will discuss more fully in its response to Pacheco's pending motion, it
 10 has been diligent in producing discovery in this case, which has to date included over 56,000
 11 pages of paper discovery and multiple terabytes of digital evidence.² The government's diligence
 12 has also included reproducing some of the discovery to defense several times at the defense's
 13 request. Most recently, on March 24, 2023, Pacheco requested the government re-produce
 14 approximately 31,000 pages of discovery. Counsel requested the reproduction on the grounds
 15 that they were "unable to reconcile" the document range listed on signed receipts of discovery
 16 with the documents they currently had in their possession. Upon further inquiry, counsel stated
 17 it appeared that much of the discovery the government had previously produced had been
 18 misplaced and could not be located. Additionally, counsel stated that there were some
 19 unspecified files previously produced but never accessed by counsel until recently and that they
 20 had learned the files were "corrupted." The government requested a 16GB flash drive to

21 ¹ On April 4, 2023, government counsel met and conferred with defense counsel
 22 concerning their position on continuing trial. Despite representing that they would not be able to
 23 present an effective defense if this matter proceeded to trial on May 8, counsel advised that they
 would oppose any further continuance given their pending motion to dismiss.

² In Pacheco's motion to dismiss, he also represents that he still intends to forensically
 process approximately four terabytes of data that the government originally produced on
 November 21, 2022. ECF No. 117, at 10.

1 reproduce the requested discovery. On April 3, 2023, the government received an 8GB flash
2 drive, which is insufficient for the requested reproduction, and the government has been working
3 with defense counsel to resolve the issue and complete the requested reproduction.

4 Meanwhile, on March 31, 2023, Pacheco filed a motion to dismiss, arguing that this case
5 should be dismissed with prejudice due to violation of his speedy trial rights under the Sixth
6 Amendment, as well as outrageous government misconduct premised upon factual assertions the
7 government intends to challenge. ECF No. 117. The government's response is due on April 14,
8 2023, and Pacheco's reply is due April 21, 2023. ECF No. 115. This timeline provides this Court
9 with just over just over two weeks prior to trial to decide a substantive and dispositive pretrial
10 motion.

11 III. POINTS AND AUTHORITIES

12 Although the Speedy Trial Act requires that a trial be set at the earliest practicable time,
13 courts have discretion to continue an existing trial date and exclude the delay from the speedy
14 trial calculation in certain circumstances. 18 U.S.C. §§ 3161(a) and (h). Such circumstances
15 include "delay resulting from any pretrial motion" or "delay reasonably attributable to any
16 period, not to exceed thirty days, during which any proceeding concerning the defendant is
17 actually under advisement by the court." 18 U.S.C. §§ 3161(h)(1)(D) and (h)(1)(H); *see also*
18 *United States v. Nance*, 666 F.2d 353, (9th Cir. 1982) ([A]lthough no provision of the Speedy Trial
19 Act is intended to bar any sixth amendment speedy trial claim, it will be an unusual case in
20 which the time limits of the Speedy Trial Act have been met but the sixth amendment right to
21 speedy trial has been violated.") (citation omitted); *United States v. Baker*, 63 F.3d 1478, 1497 (9th
22 Cir. 1995) ("[T]he Speedy Trial Act affords greater protection to a defendant's right to a speedy
23 trial than is guaranteed by the Sixth Amendment, and therefore a trial which complies with the
Act raises a strong presumption of compliance with the Constitution.").

1 In this case, Pacheco's Motion to Dismiss is not yet even under advisement by the Court.
2 Although briefing on the matter is due prior to trial, the current briefing deadlines leaves the
3 Court a mere two weeks to consider the issues in the underlying pleadings and issue an opinion
4 before trial currently scheduled on May 8, 2023. The Court's determination on Pacheco's
5 Motion to Dismiss is dispositive to the charges in this case. Accordingly, the Government
6 respectfully requests a continuance of the trial date such that the Court can appropriately
7 consider the matter and timely enter its Order. This continuance should be excluded under 18
8 U.S.C. § 3161(h)(1)(D).

9 This is the first Motion to Continue filed herein.
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Based on the foregoing, the Court should continue trial in this case and enter an order vacating the calendar call scheduled for May 2, 2023, and trial scheduled for May 8, 2023, and rescheduling the same at a time convenient to the Court.

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United States Attorney

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United States Attorney
Nevada Bar No. 7709
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NADIA AHMED
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Order

Based on the pending motion, and good cause appearing therefore, the Court finds that:

1. Additional time is needed for the Court to consider the pending pretrial motion to dismiss (ECF No. 117), which has not yet been fully briefed.
2. Defense counsel has made representations that they are not prepared to proceed to trial and present an effective defense.
3. The additional time requested herein is not sought for purposes of delay, but to allow the Court to fully consider the pending motion to dismiss prior to trial.

ORDER

IT IS FURTHER ORDERED that the calendar call currently scheduled for May 2, 2023, at the hour of 1:30 p.m., be vacated and continued to **September 5, 2023 at 1:30 pm**; and the trial currently scheduled for May 8, 2023, at the hour of 9:00 a.m., be vacated and continued to **September 11, 2023 at 9:00 am.**

DATED this the 5th day of April, 2023.

A handwritten signature in black ink, appearing to be 'RFB' with a stylized flourish extending to the right.

THE HONORABLE RICHARD F. BOULWARE
UNITED STATES DISTRICT JUDGE